IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 550/2004

Jaykrishna Industries Ltd.,
A Company registered under the Indian
Companies Act, 1956, having its
registered Office at B-15, `Balaram'
Bandra- Kurla Commercial Complex,
Bandra (E), Mumbai 400 051 through
Power of Attorney Shri Audhoot Shirodkar,
resident of H.No.E 65 Carmi Bhat,
Merces, Goa. ..... Petitioner.

V/s.

1. Economic Development Corporation,
EDC House, 1st Floor,
Der. Atmaram Borkar Road,
P.B. No.275, Panaji, Goa.

2. M/s Roots Corporation Ltd.,
2nd Floor, Narang House,
C.S. Maharaj Marg,
Appollo Bunder, Mumbai 400 035. ..... Respondents.

Mr. S.S. Kantak, Advocate for the petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Advocate for respondent No. 1

Mr. M.S. Usgaonkar, Sr. Advocate with Mr. S.V. Kamat, Advocate for respondent No.2.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Judgment :
7th February, 2005.

Date of pronouncing the Judgment :
16th February, 2005.

J U D G M E N T : (Per LAVANDE, J.)

Rule. The learned Counsel appearing for the respondents waive notices. With the consent of the learned Counsel appearing for the parties, heard forthwith

2. By this petition, the petitioner which is a company, registered under the Indian Companies Act, 1956 inter alia, dealing with the business of development and construction, challenges the action of respondent No.1 in not allotting three plots in their favour and allotment of two plots in favour of respondent No.2. The petitioner also challenges, as illegal, the auction held by respondent No.1 on 7.12.2004 and 14.1.2005 in respect of one of the plots. Respondent No.1 is a Government Company and is `State' within the meaning of Article 12 of the Constitution of India. Respondent No.1 has developed an area admeasuring about 1,77,000.00 sq. metres at Patto Panaji in the State of Goa. This area is styled as `EDC's Patto Plaza'. Respondent No.1 has developed the said area into several plots and some of the plots have been already allotted to different parties on lease basis.

3. Respondent No.1 issued an advertisement in respect of three plots which were to be auctioned on lease basis on 13.9.2004 at 3.30 p.m. The brochure was also issued giving the details of allotment of plots

as also the auction rules and procedure. In addition, there was a separate handout, laying the conditions of auction in respect of plot Nos.36, 37 and 38. The persons interested in bidding were required to apply in the prescribed form along with an amount of Rs.10,00,000/- as Earnest Money, payable by demand draft in favour of respondent No.1. It was also provided that the highest bid was subject to the acceptance by the Managing Director of respondent No.1. The intending purchaser was informed about the acceptance of his bid in writing and upon such acceptance, the intending purchaser was required to pay within 10 days of acceptance letter to respondent No.1, 25 % of the bid amount as advance money and the balance 75 % bid amount within four months of the date of acceptance. Earnest money of Rs.10,00,000/- was to be adjusted in advance money of 25 %. In the event of failure to pay the amount by the successful bidder, the auction would stand cancelled and the earnest money deposit by the highest bidder would stand forfeited. In respect of all these three plots, the following conditions would also regulate the auction :

a) The three plots could be sold together and the interest parties are expected to bid for total area of three plots. Alternatively, the parties could bid for three plots separately.

b) The auction of the three plots together would be conducted first and then of three plots individually.

c) The Corporation will facilitate amalgamation of three plots, if

sought for by the successful bidder. The balance money was required to be paid within one month of the date of acceptance letter.

4. In terms of the advertisement, on 13.9.2004, the auction was conducted by respondent no.1. The three plots together were first put to auction and the bidders were asked to bid for all the three plots. The petitioner offered Rs.7,000/- per sq. metres, which was the highest bid at the said auction. The amount offered by the petitioner for all the three plots was Rs.4,59,12,300/- . Thereafter, respondent No.1 conducted auction of three plots individually and at this auction, the bids were as follows :

Plot No.	Area in sq. metre	Rate (in Rs.)
36	3150	6,251-00
37	1440.30	9,425-00
38	1968.60	9,425-00

The total bid amount of three plots as per the individual auction was Rs. 5,18,51,032.50.

5. On the 10.9.2004, the petitioner wrote a letter to respondent No.1, requesting respondent No.1 to consider the change in payment terms, as under :

25 % of the bid amount as advance money to be paid within 30 days instead of 10 days at present.

Balance 75 % of the bid amount to be paid within 4 months instead of one month from the date of acceptance letter.

Thereafter, the petitioner wrote a letter to respondent No.1 intimating that the petitioner was entitled to the allotment of the said plots, since the petitioner was the highest bidder at the said auction. The petitioner also volunteered to pay the difference of Rs.59,38,732.50 paise, by which the bid amount as per the second auction was higher. On 20.9.2004, the petitioner received letter dated 15.9.2004 along with the demand draft of Rs.10,00,000/- towards the earnest money, informing the petitioner that the petitioner's bid could not be accepted by respondent No.1. The petitioner wrote another letter to respondent No.1 reiterating that the petitioner was entitled to the allotment of the said three plots and further that the second auction could not be held as per the terms and conditions governing the auction. Thereafter, the petitioner sent legal notice to respondent No.1 to which respondent No.1 replied, stating that the petitioner was not entitled to the allotment of the said three plots and that respondent No.1 was entitled to hold the second auction. Upon the petitioner coming to know that respondent No.1 had accepted the bid of respondent No.2 in respect of plots No.37 and 38, the present petition came to be filed on 29.11.2004.

6. During the pendency of this petition, respondent No.1 advertised the auction of plot No.36 on 7.12.2004. The petitioner sought

interim relief regarding the auction of plot No.36. By order dated 6.12.2004, interim relief was refused to the petitioner. However, it was ordered that in case, in the auction which was scheduled on 7.12.2004, there was no bid beyond Rs.7,000/- per sq. metre, the offer of the petitioner of Rs.7000/- per sq. metres will be considered. The petitioner was also given liberty to participate in the auction held on 7.12.2004. The petitioner did not participate in the auction held on 7.12.2004. In the auction held on 7.12.2004, in respect of plot No.36, the highest offer of Rs.7005/- was given by M/s. Gautam Builders and Developers from Bangalore. Respondent No.1 decided not to accept the said bid for plot No.36 and accordingly refunded the amount of Rs.10,00,000/- deposited by the said Company as earnest money. Thereafter an advertisement was issued in the local daily dated 21.1.2005, fixing the auction of plot No.36 on 8.2.2005, for which the minimum bid was fixed at Rs.8,000/- per sq. metre. The petitioner has challenged the action of respondent No.1 in holding auction of plot No.36 on 7.12.2004 and on 8.2.2005.

7. Mr. Kantak, learned Counsel appearing for the petitioner submitted that having regard to the terms and conditions of the auction, respondent No.1 was not entitled to hold auction in respect of individual plots and, therefore, the second auction held on the same day in respect of the individual plots No.36, 37 and 38 was without any authority. The learned Counsel further submitted that respondent No.1

could have held the auction in respect of the individual plots only if the minimum bid price fixed by respondent No.1 was not offered by any of the bidders at the auction. The learned Counsel further submitted that the petitioner was entitled to allotment of the three plots being the highest bidder in the auction held on 13.9.2004. According to the learned Counsel, the auction held in respect of Plot No.36 by respondent No.1 on 7.12.2004 and 8.2.2005 is without any authority since respondent No.1 was bound to allot all the three plots to the petitioner, being the highest bidder.

8. Mr. Nadkarni, Learned Advocate General appearing for respondent No.1 submitted that the offer made by the petitioner was conditional inasmuch as in letter dated 10th September, 2004 addressed to respondent No.1, the petitioner had requested to consider the change in payment schedule and, therefore, the petitioner is not entitled to the reliefs sought for. In support of his submission, the learned Advocate General relied upon an unreported Judgment of this Court dated 22nd April, 2004, in the case of ***Capital Controls India Pvt. Ltd. vs. State of Goa and others, (***WP No.290/2002). He further submitted that if the offer made by the petitioner is accepted, respondent No.1 would suffer loss of Rs.82,60,000/- . He also submitted that the terms and conditions of the tender are not open for judicial review and in support of this submission, the learned Counsel has relied upon a Judgment of the

Apex Court in the case of ***Directorate of Education and others vs. Educomp Datamatics Ltd., and ors.*** ***(*** (2004) AIR SCW 1505). It is further submitted that the petitioner has approached this Court belatedly and moreover, no malafides have been alleged as against respondent No.1. It is submitted that the concern of respondent No.1 is to get highest revenue and, therefore, no fault could be found with the action of respondent No.1 in not allotting three plots to the petitioner. According to the learned Advocate General, a plain reading of the terms and conditions, would reveal that respondent No.1 was fully justified in holding the auction plotwise, after holding auction in respect of the all the three plots together and the petitioner having accepted the terms and conditions, the petitioner is estopped from contending that the terms and conditions do not stipulate that respondent No.1 could hold auction plotwise, after holding the auction in respect of the three plots together. He relied upon the Judgment of the Apex Court in ***Tata Cellular vs. Union of India, (*** (1994) 6 SCC 651), and more particularly paragraphs 69, 70, 77 and 94 of the said Judgment and submitted that no case is made out by the petitioner for grant of reliefs prayed for.

9. Mr. Usgaonkar, learned Senior Counsel appearing for respondent No.2 while adopting the arguments of the learned Advocate General, submitted that the action of respondent No.1 is in consonance with the terms and conditions. The learned Counsel further submitted

that respondent No.2 has already taken possession and the petitioner having approached this Court belatedly, the petitioner is not entitled to the reliefs sought for. The learned Counsel relied upon the Judgment of the Apex Court in the case of ***Fertilizer Corporation Kamgar Union (Regd.), Sindri and others vs. Union of India and ors, (***(1981) 1 SCC 568) and submitted that if the authority has acted fairly, even if it has faltered in its wisdom, the court cannot take the authority to task and the function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness.

10. We have considered the submissions of the learned Counsel appearing for the parties. On plain reading of the advertisement and the terms and conditions, it is evident that respondent No.1 could hold auction in respect of the three plots together and thereafter, hold the auction in respect of individual plots. That being the position, the only conclusion which can be drawn is that respondent No.1 was fully justified in holding the auction and not allotting all the three plots to the petitioner since the offer made by the petitioner in respect of plots No.37 and 38 was Rs.7000/- per sq. metres and the offer made by respondent No.2 was Rs.9425/- per sq. metre. We are unable to accept the submission made by the learned Counsel for the petitioner that respondent No.1 had no authority to hold the auction in respect of the individual plots. The petitioner having participated in the auction on the

basis of the said terms and conditions is estopped from challenging the terms and conditions, on the basis of which the auction was held. Once we hold that respondent No.1 was legally justified in holding the auction plotwise, the action of respondent No.1 in not allotting all the three plots to the petitioner cannot be faulted, since, admittedly, the respondent No.1 would get more revenue by allotment of plots No.37 and 38 to respondent No.2. Similarly, the action of respondent No.1 in holding fresh auction in respect of Plot No.36 by fixing the higher minimum bid price cannot also be faulted, because it is for respondent No.1 to decide as to what maximum price it should get in respect of plot No.36. In this connection, Mr. Usgaonkar is justified in placing reliance on paragraph 35 of the Judgment in the case of ***Fertilizer Corporation Kamgar Union (Regd.), Sindri and others vs. Union of India and ors, (supra),*** which reads as under :

> " **35.** A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Articles 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the Court until other ombudsman earragments – a problem with which Parliament has been wrestling for too long – emerges. I have dwelt at a little length of this policy aspect and the court process because the learned Attorney-General challenged the petitioner's locus standi either qua worker or qua citizen to question in court the wrongdoings of the public sector although he maintained that what had been done by the Corporation

> was both bona fide and correct. We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

We are however, unable to accept the submission of the learned Counsel appearing for the respondents that in view of letter dated 10th September, 2004 addressed by the petitioner to respondent No.1, requesting to consider the change in payment schedule, the petitioner is not entitled to the relief sought for. It is to be noted that the petitioner was permitted to take part in the auction held on 13.9.2004 and respondent No.1 did not disqualify the petitioner on the ground that the petitioner had requested for change in payment schedule. At this stage it would be appropriate to quote paragraphs 74, 77 and 94 of the Judgment in the case of ***Tata Cellular vs. Union of India,*** (supra), which read as under :

" **74.** Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers ?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. *Secretary of State of the Home Department, ex Brind*, Lord Diplock refers specifically to

one development, namely, the possible recognition of the principle of proportionality. In all these cases, the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

94. The principles deducible from the above are :

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to adept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the

> application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
>
> (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.
>
> Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

11. Having regard to the principles laid down by the Apex Court in the case of ***Tata Cellular vs. Union of India (supra)***, we are of the opinion that the action of respondent No.1 cannot be termed as arbitrary or illegal, warranting interference by this Court in exercise of writ jurisdiction. The action of respondent No.1 to allot plots No.37 and 38 has been taken by considering the higher offer made by respondent No.1 and in so far as plot No.36 is concerned, we are of the opinion that respondent No.1 is fully justified in not accepting the price of Rs.7005/- and insisting on higher price and on that count holding fresh auction. As stated above, in our view the said action of respondent No.1 is with a view to get higher revenue and, as such, cannot be faulted.

12. In the result, therefore, we do not find any merit in this petition. Consequently, the petition is dismissed. Rule is discharged.

Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

N.A. BRITTO, J

ssm.